

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No.: 04-11939-JGD

_____)
MICHAEL J. WHALON,)
)
Plaintiff,)
)
v.)
)
CHRISTY'S OF CAPE COD, LLC,)
)
Defendant.)
_____)

BRIEF JOINT STATEMENT

Plaintiff Michael J. Whalon ("Whalon") and Defendant Christy's of Cape Cod, LLC ("Christy's") (collectively, "the Parties") jointly submit this Statement pursuant to the Court's Order of November 22, 2005 requesting a joint report and statement in this matter.

As of this date, the Parties can report the following:

1. Status of the Case: Fact discovery is nearly complete. The Parties have recently concluded written discovery, save for supplementation of prior answers and/or supplemental requests based upon information adduced during depositions. To date, all such issues have been resolved amicably among Counsel. Depositions of non-medical witnesses are nearly complete, save for one or possibly two former employees of Christy's. In February 2006, counsel for the Parties met and conferred regarding potential settlement and/or completion of discovery in this case. At that time, the Parties agreed upon and executed both a Release of Medical Information and a Confidentiality Agreement designed to expedite the completion of depositions of treating clinicians and

subpoenas of medical records from same, while at the same time protecting the confidentiality of Whalon's medical records. The parties have yet to designate expert witnesses, but based on discussion of counsel, Whalon may rely upon one or more treating clinicians as potential experts in this case. Christy's has prepared subpoenas for all providers and will serve same, and then notice depositions of those clinicians who are expected to testify upon designation of same by Whalon. Christy's will also designate expert witness(es) within 10 days of any designation by Whalon.

The Parties also believe that a brief period permitting the use of Requests for Admissions would be beneficial, and would request that the Court permit same following the conclusion of discovery.

2. Scheduling Remainder of the Case: The Parties continue to believe that the phased discovery program established by the Court is desirable. The Parties believe, however, that a slight extension of time (30 days) is necessary to ensure the proper and efficient completion of discovery in this case. A separate Joint Motion, stating the grounds therefore, accompanies this Brief Joint Statement.

3. Use of Alternative Dispute Resolution Programs: Throughout the discovery process, counsel for the Parties have maintained ongoing discussions regarding possible settlement. While counsel for both Parties believe that ADR (possibly mediation) may be a useful tool, counsel have concluded that the Parties themselves hold sufficiently differing assessments of the financial value of potential damages so as to weigh against the productivity of ADR at this time. Counsel will continue to discuss this topic, most notably at the conclusion of all discovery, including depositions of experts.

4. Conference Before the Court: Counsel do not believe that a conference before the Court is necessary at this time. Counsel anticipate completing discovery, as outlined above, and proceeding to Summary Judgment if a settlement is not possible.

Dated: March 8, 2006

Respectfully submitted.

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/s/ David O. Scott

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